IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 4119 of 2003

Between:

Anguluri Nagamani, W/o A.Madhava Rao,
R/o Katlampudi, Eluru Mandal, West Godavari District.

..... PETITIONER

AND

1 The District Collector., West Godavari,
Eluru, West Godavari.
2 The Mandal Revenue Officer., Eluru Rural,
Eluru.
3 A.Sarveswara Rao,
Katlampudi, Eluru Mandal, West Godavari District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents 1 and 2 in not initiating the action to evict the 3rd respondent and others from 300 Sq.Yards of site in Plot No.48 and also from house therein bearing Door No.1-39 in Katlampudi Village, Eluru Mandal, West Godavari District by exercising powers U/Sec.3 and 4 of A.P.Assigned Lands (Prohibition of Transfers) Act, 1977 is illegal, arbitrary, erroneous and consequently direct the respondents to consider the representation of the petitioner submitted in December, 2002 and evict the 3rd respondent and others from the 300 sq.yards of site in Plot No.48 from house therein bearing Door No.1-39 in Katlampudi Village, Eluru Mandal, West Godvari District .

Counsel for the Petitioner :MR.Y.V.RAVI PRASAD

Counsel for the Respondent No.1 AND 2: GP FOR REVENUE

Counsel for the Respondent No.3: MR. M.V.S.SURESH KUMAR

The Court made the following :

ORDER:

1. This writ petition is filed by Anguluri Nagamani with a prayer to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents 1 and 2 in not initiating the action to evict the 3rd respondent and others from 300 square yards of site in Plot No.48 and also the from house therein bearing Door No.1-39 in Katlampudi village, Eluru Mandal, West Godavari District by exercising powers under Section 3 and 4 of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 as illegal, arbitrary and unconstitutional.

2. The case of the petitioner as disclosed in the affidavit filed in support of the writ petition is :-

Petitioner is the absolute owner of site of 300 square yards and building therein situated in Katlampudi village, Eluru Mandal. She lived in the house along with her husband. The Mandal Revenue Officer, granted D-Form patta in her favour vide proceedings Rc.No.A.1875/92, dated 21-5-1993. Her husband developed illicit intimacy with one Mariyamma and got a son through her, who has been arrayed as Respondent No.3-A.Sarveswara Rao. Subsequently, her husband drove out her and her daughter from the house. She made a complaint to the Eluru Rural police on 8-11-1993. There upon the police registered a case in Crime No. 11 of 1993 and took up investigation. In the meanwhile, 3rd respondent filed a suit O.S.No. 315 of 1993 on the file of the Ist Additional Junior Civil Judge, Eluru seeking permanent injunction in respect of the house situated in Plot No. 48. The suit filed by him ended in dismissal on 6-10-1998. The 3rd respondent unsuccessfully carried the matter in Appeal being A.S.No.106 of 1998. After dismissal of the appeal, the petitioner made a detailed representation to the Mandal Revenue Officer to initiate proceedings under the provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977. Since, the Mandal Revenue Officer has not taken any action on her representation, she has chosen to file this writ petition.

3. Heard the learned counsel for the petitioner and also learned Government

Pleader for Assignment for Respondents No.1 and 2. Respondents No.3 despite receipt of the notice, did not choose to enter appearance.

4. The grievance of the writ petitioner is that the Respondents No.1 and 2 have not initiated proceedings under the Provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 despite of her application. At the first blush, the contention of the petitioner appears to be sound. But on close scrutiny of the records, the same is liable to be rejected. There has been a civil suit between the petitioner and the 3rd respondent and various issues are framed in the civil suit and they are as follows: -

1. Whether the plaint schedule property belongs to the plaintiff.?
2. Whether the will dated 5-1-75 is true and valid?
3. Whether the defendant has got title and possession of the schedule property in pursuance of patta dated 21-5-1993 issued by M.R.O.?
4. Whether the suit for mere injunction without the relief of declaration is maintainable ?
5. Whether the plaintiff is entitled to permanent injunction prayed for?
6. To what relief ?

5. The suit filed by the 3rd respondent ended in dismissal. The 3rd respondent unsuccessfully carried the matter in appeal to the I Additional District Judge, West Godavari, Eluru by filing A.S.No.106 of 1998.

6 . On thorough examination of the material brought on record, the learned I Additional District Judge dismissed the appeal. Para 19 of the judgment passed in A.S.No.106 of 1998 reads as follows:

> *"The plaintiff filed the suit on 17-11-1993. The patta is granted in favour of the defendant on 21-5-1993. The defendant is living in the schedule property even prior to 21-5-1993. The defendant apprehending that her husband is trying to evict her from the house with a mala fide intention to convey the same to him kept mistress Mariyamma and her children, gave a report to the police on 8-11-1993. The same is registered as a case in Cr.No. 11/93. The Govt. granted patta to her. The same is not cancelled. She is in possession of property. The plaintiff having came to know about grant of patta in favour of the*

defendant, filed the suit. The plaintiff has not added the Government as party to the suit. It is his contention the schedule property is his exclusive property, but the Government has issued patta in favour of the defendant, when it is so, he must add the government as party to the suit. For the foregoing reasons, I hold the plaintiff failed to prove is possession and enjoyment by the date of suit. Therefore, he is not entitled to the relief of permanent injunction. I decide the points accordingly".

7. It is explicit from the above referred para of the judgment passed in A.S.No.106 of 1998 that both the trial Court and appellate Court found the writ petitioner to be in possession of the property and thereby refused the relief claimed by the plaintiff therein-3rd respondent. Admittedly the petitioner has not alienated the lands and her possession has been upheld by both the Courts i.e. trial Court and Appellate Court. In such a case, the respondent-Mandal Revenue Officer, initiating any proceeding basing on the representation of the petitioner does not arise.

8. Accordingly, the writ petition is dismissed. No order as to costs.

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B.Seshasayana Reddy,J

5th July, 2005

KM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Collector., West Godavari,
Eluru, West Godavari.
2 The Mandal Revenue Officer., Eluru Rural,
Eluru.
3. 2 CCs to G.P. for Revenue, High Court Buildings, Hyderabad

(Out)

4. 2 CD copies

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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